

**Letter of Findings: 08-0713P
Sales and Use Tax
For the Year 2008**

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ISSUES

I. Tax Administration – Interest.

Authority: IC § 6-8.1-10-1.

Taxpayer protests the imposition of interest.

II. Tax Administration – Penalty.

Authority: IC § 6-8.1-10-2.1; [45 IAC 15-11-2](#).

Taxpayer protests the imposition of the ten percent negligence penalty.

STATEMENT OF FACTS

Taxpayer is in the restaurant and lounge business in Indiana. In November 2008, the Department of Revenue ("Department") notified Taxpayer of its failure to remit sales tax that Taxpayer had collected to the State of Indiana. Taxpayer remitted the sales tax. However, Taxpayer protests the interest and penalty imposed by the Department. The Letter of Findings is based on the information in the file. Additional facts will be provided as necessary.

I. Tax Administration – Interest.

DISCUSSION

The Department assessed interest on the tax liabilities. Taxpayer protests this imposition of interest.

IC § 6-8.1-10-1(a) provides, as follows:

If a person fails to file a return for any of the listed taxes, fails to pay the full amount of tax shown on the person's return by the due date for the return or the payment, or incurs a deficiency upon a determination by the department, the person is subject to interest on the nonpayment.

Pursuant to IC § 6-8.1-10-1(e), the Department does not have the authority to waive the interest.

FINDING

Taxpayer's protest on the imposition of interest is respectfully denied.

II. Tax Administration – Penalty.

DISCUSSION

Taxpayer also protests the imposition of the negligence penalty.

Pursuant to IC § 6-8.1-10-2.1, the Department may assess a ten (10) percent negligence penalty if the taxpayer:

- (1) fails to file a tax return;
- (2) fails to pay the full amount of tax shown on the tax return;
- (3) fails to remit in a timely manner the tax held in trust for Indiana (e.g., a sales tax); or
- (4) fails to pay a tax deficiency determined by the Department to be owed by a taxpayer.

[45 IAC 15-11-2](#)(b) further states:

"Negligence" on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

The Department may waive a negligence penalty as provided in [45 IAC 15-11-2](#)(c), in part, as follows:

The department shall waive the negligence penalty imposed under [IC 6-8.1-10-1](#) if the taxpayer affirmatively establishes that the failure to file a return, pay the full amount of tax due, timely remit tax held in trust, or pay a deficiency was due to reasonable cause and not due to negligence. In order to establish reasonable cause, the taxpayer must demonstrate that it exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed under this section. Factors which may be considered in determining reasonable cause include, but are not limited to:

- (1) the nature of the tax involved;
- (2) judicial precedents set by Indiana courts;
- (3) judicial precedents established in jurisdictions outside Indiana;
- (4) published department instructions, information bulletins, letters of findings, rulings, letters of advice,

etc.;

(5) previous audits or letters of findings concerning the issue and taxpayer involved in the penalty assessment.

Reasonable cause is a fact sensitive question and thus will be dealt with according to the particular facts and circumstances of each case.

Taxpayer stated that its accountant handled all the paperwork and has timely remitted the sales tax through the Electronic Funds Transfer program. However, Taxpayer also admitted that its accountant probably failed to remit the sales tax to the State, because it could not find any documentation to substantiate its statement. Additionally, upon reviewing its bank account records, Taxpayer could not find any record regarding the transaction in question. Taxpayer's accountant is the agent employed by Taxpayer to ensure its compliance of the Indiana statutes. Taxpayer is responsible for its agent's compliance failure. Therefore, Taxpayer's protest on the imposition of negligence penalty is respectfully denied.

FINDING

Taxpayer's protest on the imposition of negligence penalty is respectfully denied.

SUMMARY

Taxpayer's protest on imposition of interest is respectfully denied. Taxpayer's protest on imposition of negligence penalty is also respectfully denied.

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